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August 9, 2001

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AUG - 9 2001

Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Re: ***CS Docket No. 00-96; In the Matter of Implementation of the  
Satellite Home Viewer Improvement Act of 1999: Broadcast Signal  
Carriage Issues  
Notice of Ex Parte Communication***

Dear Ms. Salas:

On August 8, 2001, Jon Blake and Amy Levine of Covington & Burling, on behalf of various commercial and noncommercial broadcast clients, met with Ben Bartolome, Eloise Gore, Bill Johnson, Deborah Klein, and Ron Parver, all of the Cable Services Bureau to discuss SHVIA carriage request issues.

We discussed EchoStar's denial of carriage requests from virtually all noncommercial stations of which we are aware on the grounds of failure to provide a good quality signal and/or substantial duplication of another, unidentified station in the local market. Copies of some of these letters are attached hereto as Appendix A. Copies of letters from DirecTV accepting stations' carriage requests are attached hereto as Appendix B. We also made several suggestions regarding clarifying the carriage request and complaint procedures. These include:

1. The Commission should clarify that the clock on the 60 day period stations have to file a complaint at the FCC regarding a denial of carriage starts on the date of the satellite carrier's response to the letter a station sends to a carrier pursuant to 47 C.F.R. § 76.66(m)(1) notifying it of its failure to meet its carriage obligations (the station's "protest letter"), rather than on the date of the carrier's initial letter denying carriage. This clarification of deadlines is dictated by the process Congress laid out in the remedies section of SHVIA.
2. For purposes of the protest letter, to the extent that there is any burden at all on a station to demonstrate that it provides a good quality signal, that burden is satisfied by stating that the carrier's local receive facility is within the station's Grade A contour OR by stating that an ILLR

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COVINGTON & BURLING

MS. MAGALIE ROMAN SALAS  
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analysis shows that the station delivers a signal of the required strength (-45 dBm for UHF or -49 dBm for VHF) OR by stating that a signal intensity test demonstrates that the station provides a signal of the requisite quality.

3. Stations may file a copy of a signal intensity test with their complaint but are required to do so only if a carrier provides, in its response to the protest letter, station-specific data, consistent with sound engineering practices, supporting the conclusion that the station does not provide a good quality signal.
4. With respect to substantial duplication, a carrier should be required to disclose in its initial carriage denial letter which other station(s) in the market it claims substantially duplicates the station's programming and state that it intends to carry the other station.
5. For purposes of the protest letter, a station may satisfy its burden of showing that it does not substantially duplicate another station in the market by submitting a random sample of station schedules (e.g., schedules for the first week of every month for the last 3 months), but this is not the only way it may satisfy this burden.
6. A station may file a copy of the entire 3 month schedule of the NCEs in the market that the carrier alleges it substantially duplicates with its complaint but is required to do so only if the carrier has provided, in its response to the protest letter, station-specific data supporting the conclusion that the station's programming substantially duplicates that of other station(s) in the market.

We discussed EchoStar's decision not to offer local-into-local service in markets where it had previously indicated that it would be launching local-into-local service. Copies of letters regarding this decision are attached hereto as Appendix C. Finally, we talked about station complaints that EchoStar is transmitting distant signals to subscribers for whom stations have denied waiver requests, in some cases multiple times.

Sincerely,



Jonathan D. Blake  
Amy L. Levine

cc: Ben Bartolome  
Eloise Gore  
Bill Johnson  
Deborah Klein  
Ron Parver





ECHOSTAR COMMUNICATIONS CORPORATION

July 30, 2001

Philip A. Titus  
KUED  
Eccles Broadcast Ctr  
101 S. Wasatch Dr-Rm 215  
Salt Lake City, UT 84112

Re: KUED Mandatory Carriage Election

Dear Mr. Titus:

The above-referenced election for mandatory carriage made pursuant to the Satellite Home Viewer Improvement Act is rejected for the reason(s) set forth below:

- ☐ Duplicate Network Affiliate in Designated Market Area ("DMA")
- ☐ Duplicate Non-Network Affiliate Located in State other than State of DMA
- ☐ Election Postmarked after July 1, 2001 Deadline
- ☒ Failure to Prove Signal Meets Legal Standard of Quality Necessary for Mandatory Carriage
- ☐ Failure to Provide Affirmative Carriage Election
- ☐ Failure to Provide Community Of License
- ☐ Failure to Provide DMA Assignment
- ☐ Failure to Send Election via Certified Mail Return Receipt Requested
- ☐ Low Power & Class A Stations Not Entitled to Must Carry Election
- ☐ Must Carry Election Rescinded/Waived by Elector
- ☐ Nielsen DMA Assignment and Community of License not in DISH DMA
- ☒ \*Substantial Duplication of Programming with Station in Same DMA
- ☐ Terms of Pre-existing Retransmission Consent Agreement

\*We have reason to believe that your station "substantially duplicates" the signal of another station assigned to your DMA, as defined by applicable regulations. If you disagree, please identify in writing those reasons why substantial duplication does not in fact exist, within 15 calendar days of the date of this correspondence.

All inquiries may be directed to: [must-carry@echostar.com](mailto:must-carry@echostar.com).

Sincerely,

Eric Sahl  
Director of Programming

/nr



ECHOSTAR COMMUNICATIONS CORPORATION

July 30, 2001

Phillip A. Titus  
KULC  
Eccles Broadcast Ctr  
101 S. Wasatch Dr-Rm 215  
Salt Lake City, UT 84112

Re: KULC Mandatory Carriage Election

Dear Mr. Titus:

The above-referenced election for mandatory carriage made pursuant to the Satellite Home Viewer Improvement Act is rejected for the reason(s) set forth below:

- ☐ Duplicate Network Affiliate in Designated Market Area ("DMA")
- ☐ Duplicate Non-Network Affiliate Located in State other than State of DMA
- ☐ Election Postmarked after July 1, 2001 Deadline
- ☒ Failure to Prove Signal Meets Legal Standard of Quality Necessary for Mandatory Carriage
- ☐ Failure to Provide Affirmative Carriage Election
- ☐ Failure to Provide Community Of License
- ☐ Failure to Provide DMA Assignment
- ☐ Failure to Send Election via Certified Mail Return Receipt Requested
- ☐ Low Power & Class A Stations Not Entitled to Must Carry Election
- ☐ Must Carry Election Rescinded/Waived by Elector
- ☐ Nielsen DMA Assignment and Community of License not in DISH DMA
- ☒ \*Substantial Duplication of Programming with Station in Same DMA
- ☐ Terms of Pre-existing Retransmission Consent Agreement

"We have reason to believe that your station "substantially duplicates" the signal of another station assigned to your DMA, as defined by applicable regulations. If you disagree, please identify in writing those reasons why substantial duplication does not in fact exist, within 15 calendar days of the date of this correspondence.

All inquiries may be directed to: [must-carry@echostar.com](mailto:must-carry@echostar.com).

Sincerely,

Eric Sahl  
Director of Programming

/nr



ECHOSTAR COMMUNICATIONS CORPORATION

July 30, 2001

Jonathan Abbott  
WGBX-TV  
125 Western Ave  
Boston, MA 02134

Re: WGBX-TV Mandatory Carriage Election

Dear Mr. Abbott:

The above-referenced election for mandatory carriage made pursuant to the Satellite Home Viewer Improvement Act is rejected for the reason(s) set forth below:

- ☐ Duplicate Network Affiliate In Designated Market Area ("DMA")
- ☐ Duplicate Non-Network Affiliate Located In State other than State of DMA
- ☐ Election Postmarked after July 1, 2001 Deadline
- ☒ Failure to Prove Signal Meets Legal Standard of Quality Necessary for Mandatory Carriage
- ☐ Failure to Provide Affirmative Carriage Election
- ☐ Failure to Provide Community Of License
- ☐ Failure to Provide DMA Assignment
- ☐ Failure to Send Election via Certified Mail Return Receipt Requested
- ☐ Low Power & Class A Stations Not Entitled to Must Carry Election
- ☐ Must Carry Election Rescinded/Waived by Elector
- ☐ Nielsen DMA Assignment and Community of License not in DISH DMA
- ☒ \*Substantial Duplication of Programming with Station In Same DMA
- ☐ Terms of Pre-existing Retransmission Consent Agreement

"We have reason to believe that your station "substantially duplicates" the signal of another station assigned to your DMA, as defined by applicable regulations. If you disagree, please identify in writing those reasons why substantial duplication does not in fact exist, within 15 calendar days of the date of this correspondence.

All inquiries may be directed to: [must-carry@echostar.com](mailto:must-carry@echostar.com).

Sincerely,

Eric Sahl  
Director of Programming

/nr



ECHOSTAR COMMUNICATIONS CORPORATION

July 30, 2001



Re: [REDACTED] Mandatory Carriage Election

Dear [REDACTED]:

The above-referenced election for mandatory carriage made pursuant to the Satellite Home Viewer Improvement Act is rejected for the reason(s) set forth below:

- ☐ Duplicate Network Affiliate in Designated Market Area ("DMA")
- ☐ Duplicate Non-Network Affiliate Located in State other than State of DMA
- ☐ Election Postmarked after July 1, 2001 Deadline
- ☒ Failure to Prove Signal Meets Legal Standard of Quality Necessary for Mandatory Carriage
- ☐ Failure to Provide Affirmative Carriage Election
- ☐ Failure to Provide Community Of License
- ☐ Failure to Provide DMA Assignment
- ☐ Failure to Send Election via Certified Mail Return Receipt Requested
- ☐ Low Power & Class A Stations Not Entitled to Must Carry Election
- ☐ Must Carry Election Rescinded/Waived by Elector
- ☒ Nielsen DMA Assignment and Community of License not in DISH DMA
- ☒ \*Substantial Duplication of Programming with Station in Same DMA
- ☐ Terms of Pre-existing Retransmission Consent Agreement

\*We have reason to believe that your station "substantially duplicates" the signal of another station assigned to your DMA, as defined by applicable regulations. If you disagree, please identify in writing those reasons why substantial duplication does not in fact exist, within 15 calendar days of the date of this correspondence.

All inquiries may be directed to: [must-carry@echostar.com](mailto:must-carry@echostar.com).

Sincerely,

Eric Sahli  
Director of Programming

/nr



ECHOSTAR COMMUNICATIONS CORPORATION

July 30, 2001



Re: [REDACTED] Mandatory Carriage Election

Dear [REDACTED]:

The above-referenced election for mandatory carriage made pursuant to the Satellite Home Viewer Improvement Act is rejected for the reason(s) set forth below:

- [ ] Duplicate Network Affiliate in Designated Market Area ("DMA")
- [ ] Duplicate Non-Network Affiliate Located in State other than State of DMA
- [ ] Election Postmarked after July 1, 2001 Deadline
- [X] Failure to Prove Signal Meets Legal Standard of Quality Necessary for Mandatory Carriage
- [ ] Failure to Provide Affirmative Carriage Election
- [ ] Failure to Provide Community Of License
- [ ] Failure to Provide DMA Assignment
- [ ] Failure to Send Election via Certified Mail Return Receipt Requested
- [ ] Low Power & Class A Stations Not Entitled to Must Carry Election
- [ ] Must Carry Election Rescinded/Waived by Elector
- [ ] Nielsen DMA Assignment and Community of License not in DISH DMA
- [ ] Terms of Pre-existing Retransmission Consent Agreement

All inquiries may be directed to: [must-carry@echostar.com](mailto:must-carry@echostar.com).

Sincerely,

Eric Sahl  
Director of Programming

/nr





July 25, 2001

Philip Titus  
KUED-TV Channel 7  
Eccles Broadcast Center  
101 S. Wasatch Drive, Room 215  
Salt Lake City, UT 84112

Dear Mr. Titus:

We are in receipt of your letter requesting mandatory carriage for KUED 7 in the Salt Lake City UT local market.

We are pleased to inform you that DIRECTV will commence carriage of KUED 7, in accordance with Section 338 of the Communications Act of 1934 and the Federal Communications Commission's Rules, by January 1, 2002 in the Salt Lake City UT local market.

KUED 7's over-the-air signal at our local receive facility in the Salt Lake City UT local market meets the good quality signal standard specified in the Federal Communications Commission's Rules. We judge the subjective picture quality to be good, relative to the best off-air reception. The signals for some stations in your market are delivered to our local receive facility by TV-1 fiber, which provides picture quality superior to the best off-air reception. If you wish the quality of your signal carried by DIRECTV to compare favorably with these other stations in your market, we suggest that you provide your signal to our local receive facility by fiber, microwave, or other high-quality, reliable direct means. In accordance with the FCC's Rules, KUED 7 would pay the cost of such delivery mechanisms.

Technical questions and those related to the local receive facility can be forwarded by email to [SHVIA-Tech@directv.com](mailto:SHVIA-Tech@directv.com). Correspondence unrelated to the local receive facility should be sent to **DIRECTV Local Into Local**, 2230 E. Imperial Highway, Mail Stop N344, El Segundo, CA 90245.

Sincerely,

**DIRECTV**



July 25, 2001

[REDACTED]

Dear [REDACTED]

We are in receipt of your letter requesting mandatory carriage for [REDACTED] in the [REDACTED] local market.

We are pleased to inform you that DIRECTV will commence carriage of [REDACTED] in accordance with Section 338 of the Communications Act of 1934 and the Federal Communications Commission's Rules, by January 1, 2002 in the [REDACTED] local market.

[REDACTED] over-the-air signal at our local receive facility in the [REDACTED] local market meets the good quality signal standard specified in the Federal Communications Commission's Rules. We judge the subjective picture quality to be excellent, relative to the best off-air reception. The signals for some stations in your market are delivered to our local receive facility by TV-1 fiber, which provides picture quality superior to the best off-air reception. If you wish the quality of your signal carried by DIRECTV to compare favorably with these other stations in your market, we suggest that you provide your signal to our local receive facility by fiber, microwave, or other high-quality, reliable direct means. In accordance with the FCC's Rules, [REDACTED] would pay the cost of such delivery mechanisms.

Technical questions and those related to the local receive facility can be forwarded by email to SHVIA-Tech@directv.com. Correspondence unrelated to the local receive facility should be sent to **DIRECTV Local Into Local**, 2230 E. Imperial Highway, Mail Stop N344, El Segundo, CA 90245.

Sincerely,

**DIRECTV**



C





ECHOSTAR COMMUNICATIONS CORPORATION

July 30, 2001



**RE: NOTICE OF DECISION TO NOT LAUNCH LOCAL SERVICE**

EchoStar Communications Corporation has decided not to carry local broadcast stations in [REDACTED] DMA, at this time, based on costs to EchoStar and other considerations. At such time as EchoStar intends to launch carriage of local broadcast stations in your DMA, we will notify you in accordance with FCC regulations pertaining to must carry.

Sincerely,

A handwritten signature in black ink, appearing to read "E. Sahl".

Eric Sahl  
Director of Programming

/nr



ECHOSTAR COMMUNICATIONS CORPORATION

July 30, 2001



**RE: NOTICE OF DECISION TO NOT LAUNCH LOCAL SERVICE**

EchoStar Communications Corporation has decided not to carry local broadcast stations in [REDACTED] DMA, at this time, based on costs to EchoStar and other considerations. At such time as EchoStar intends to launch carriage of local broadcast stations in your DMA, we will notify you in accordance with FCC regulations pertaining to must carry.

Sincerely,

A handwritten signature in black ink, appearing to read "Eric Sahl".

Eric Sahl  
Director of Programming

/nr



ECHOSTAR COMMUNICATIONS CORPORATION

July 30, 2001



**RE: NOTICE OF DECISION TO NOT LAUNCH LOCAL SERVICE**

EchoStar Communications Corporation has decided not to carry local broadcast stations in [REDACTED] DMA, at this time, based on costs to EchoStar and other considerations. At such time as EchoStar intends to launch carriage of local broadcast stations in your DMA, we will notify you in accordance with FCC regulations pertaining to must carry.

Sincerely,

A handwritten signature in black ink, appearing to read "E. Sahl". The signature is stylized with a large, sweeping "S" and a distinct "H".

Eric Sahl  
Director of Programming

/nr